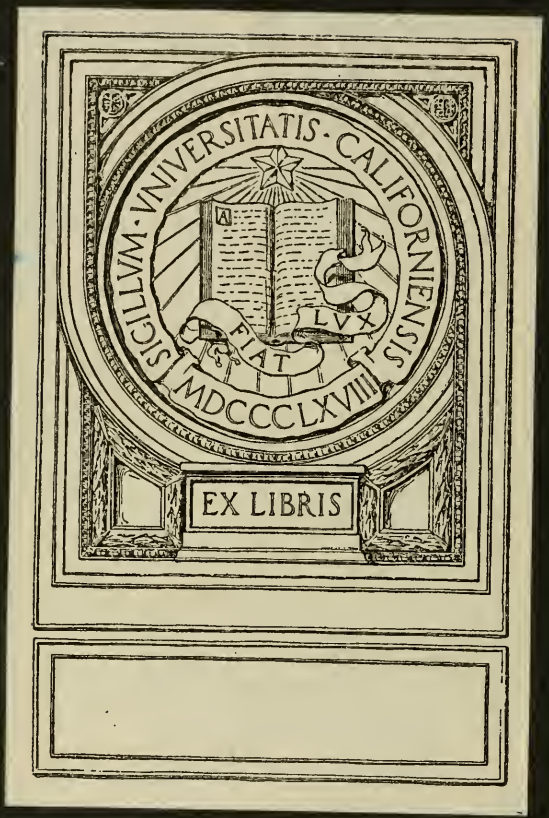
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International Control

By

W. G. S. ADAMS, M.A.

(Reprinted from the February Number of
The Political Quarterly)

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1915

BASIS OF PUBLICATION

This series of Papers is based on the following convictions :

1. That Great Britain was in August morally bound to declare war and is no less bound to carry the war to a decisive issue ;
2. That the war is none the less an outcome and a revelation of the un-Christian principles which have dominated the life of Western Christendom and of which both the Church and the nations have need to repent ;
3. That followers of Christ, as members of the Church, are linked to one another in a fellowship which transcends all divisions of nationality or race ;
4. That the Christian duties of love and forgiveness are as binding in time of war as in time of peace ;
5. That Christians are bound to recognize the insufficiency of mere compulsion for overcoming evil and to place supreme reliance upon spiritual forces and in particular upon the power and method of the Cross ;
6. That only in proportion as Christian principles dictate the terms of settlement will a real and lasting peace be secured ;
7. That it is the duty of the Church to make an altogether new effort to realize and apply to all the relations of life its own positive ideal of brotherhood and fellowship ;
8. That with God all things are possible.

INTERNATIONAL CONTROL

The present war has above all things shown the need for a new development in international control. The refusal of Austria-Hungary to submit the dispute with Servia to a court of arbitration, the frustration by Germany of the conferences offered on behalf of the Powers, the violation of Luxemburg and of Belgium, and lastly the long sequel, steadily growing, of flagrant disregard for the conventions of war built up patiently by international agreements—all these facts show how weak at a time of crisis is the machinery of international control, and how vital it is that the situation in this respect is not left as it was. Great as are the issues of the present war, the greatest is that of international right and honour, and it is not therefore too soon to face the problem of how international control can be made more effective. In particular two things have to be reconsidered, namely, the position of international arbitration, and the security of international agreements regulating the conduct of war. These two matters are logically connected one with the other. The first object of international control is to prevent, if possible, recourse to force in settling disputes. The second object is to secure that when war has come it is carried on with regard for international conventions in the interests alike of individual combatants, of non-combatants, and of neutrals.

I

First of all it is necessary to consider the position of international agreements with a view to the peaceful settlement of disputes. Circumstances such as the present

are apt to sweep out of recollection the great progress which has been made. As is well known, the principle of international arbitration has illustrations which go far back in the history of nations. But it is within quite recent years that by far the most hopeful advance in this direction has been made. In 1899 the first Hague Conference was summoned at the instance of the Tsar of Russia. In 1907 the second Hague Conference was called on the initiative of the President of the United States. It was recommended by the second conference that a third conference should follow at a similar interval. If all the progress that the conveners of the first two Hague Conferences hoped to achieve was not realized, if important questions remained outstanding on which nations were not prepared to reach a settlement, nevertheless the conventions of the Hague and the results which have followed from them mark an important stage in the development of international arbitration. In the first place, the Hague Conventions revealed much as to the state of mind of the several Governments on the leading questions of international control. Neither at the first nor at the second conference were the times ripe for the adoption of 'obligatory international arbitration'. At the second conference the general principle of obligatory international arbitration was accepted, while its application remained within the discretion of each individual Power. But the Hague Conventions have helped materially to determine what questions can be most properly settled by arbitration, while by securing the establishment of a Permanent Court of Arbitration they have provided machinery to hand for the use of nations in case of dispute.

In the second place, the Hague Conventions undoubtedly gave a great impulse to international arbitra-

tion, and in the past fifteen years over 150 treaties of arbitration have been signed. But these treaties are in most cases limited in two ways. First, they are (with the exception of a joint agreement among certain Central and South American States) separate and individual agreements between two States. There is not, in other words, a general convention among all States willing to arbitrate. Second, all but a few of the existing treaties reserve from arbitration questions of 'national honour, independence, and vital interests'. This type of agreement is to be seen in the Treaty of Arbitration between the United Kingdom and France of 1903,[1] which has been taken as a model for the arbitration treaties concluded between the United Kingdom and other countries.

That Treaty provides, in its first article, that :

> Differences which may arise of a legal nature or relating to the interpretation of Treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of July 29, 1899: provided, nevertheless, that they do not affect the vital interests, the independence, or the honour, of the two Contracting States, and do not concern the interests of third Parties.

It is further provided, in the second article of the Treaty, that in each individual case,

> The High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure.

[1] Cd. 1837. 1903.

Such is the typical treaty of arbitration ; it is hedged about with safeguards, and the fact is symptomatic of the state of mind of nations with regard to arbitration.

Now each of these limitations is in its own way highly significant. To make oneself a party not to a general arbitration convention, but to a particular treaty with another State, and to enter deliberately upon a separate binding engagement with each State, is a method which, if somewhat cumbrous, has certain advantages. As an act expressing direct good relationship between two States it is much more personal than a general convention. Again, it is a simple act binding two parties, which does not carry with it the more indefinite responsibilities and obligations which a general treaty or convention including a large number of States may involve. Further, if it seems a slow and tentative method, the large number of treaties which have been signed proves that it is an effective way of leading nations into the habit of arbitration, while it leaves the initiative to individual States to enter upon more unreserved agreements, as has been done in certain treaties among the smaller States of Europe and America. The cautious but gradual acceptance of the habit of arbitration prepares the way for wider agreements.

Still more important is the second limitation by which, in most cases, nations have reserved questions of ' vital interests, independence and national honour '. Inasmuch as it is open to either of the contracting parties to declare a matter to be a question of ' vital interest ' or of ' national honour ', these reservations seriously limit the scope of most existing treaties of arbitration. At the same time the hesitation of States is natural. The principle of arbitration, while commanding wide assent and receiving

general sympathy, has to face the strongly established doctrine of the sovereignty of the State, and sovereign States will not readily commit themselves to new and far-reaching obligations which limit their sovereignty. This is the more easily understood as the constitution of international courts has proved a subject of considerable difficulty. The history of the Hague Conferences shows that nations are still inclined to think in political terms about judicial institutions. Equal State representation, or something like it, is strongly desired. But representation is an idea which belongs to the legislative function of government. The judicial function, strictly speaking, has nothing to do with the representative idea, otherwise judgements tend to become political rather than judicial; and it is the danger of international courts becoming political rather than judicial which accounts in part for the hesitation of States to commit themselves fully to international arbitration. Before sovereign bodies will undertake to arbitrate all things, they must be satisfied as to the competence and impartiality of the court. It is therefore usual to find in treaties of arbitration not only restriction of powers, but conditions laid down with regard to an agreement upon the constitution of the court of arbitration.

Nevertheless in some cases the smaller States have advanced boldly and have drawn up unreserved treaties of arbitration, and in recent years even among the greater Powers there has seemed hope for progress in this direction. Speaking in the House of Commons on March 13, 1911, on the subject of the Army and Navy Estimates, Sir Edward Grey made the following statement:

> I can conceive of but one thing that will really affect this military and naval expenditure of the world on the wholesale scale in which it must be affected if there is

to be a real and sure relief. You will not get it till nations do what individuals have done, come to regard an appeal to law as the natural course for nations, instead of an appeal to force. Public opinion has been moving. Arbitration has been increasing. But you must take a large step further before the increase of arbitration will really affect this expenditure on armaments. I should perhaps have thought that I was not spending the time of the House profitably in asking the House to look to arbitration as something which could really touch this great expenditure, had it not been for the fact that twice within the last twelve months, in March and December, the President of the United States has sketched out a step in advance in arbitration more momentous than anything that any practical statesman in his position has ventured to say before—pregnant with consequences, and very far-reaching. I should like to quote two statements by the President of the United States. Here is the first one :

> Personally I do not see any more reason why questions of national honour should not be referred to courts of arbitration, as matters of private or national property are. I know that is going further than most men are willing to go, but I do not see why questions of honour should not be submitted to tribunals composed of men of honour who understand questions of national honour, and abide by their decision as well as any other questions of difference arising between nations.

The other statement is :

> If we can negotiate and put through agreements with some other nations to abide by the adjudication of international arbitration courts in every issue which cannot be settled by negotiation, no matter what it involves, whether honour, territory, or money, we should have made a long step forward by demonstrating that it is possible for two nations at least to establish between them the same system which through the process of law has existed between two individuals under Government.[1]

Sir Edward Grey expressed his readiness to meet the advances thus made, and a treaty on the lines of unreserved arbitration, between the United States and England, was drafted. The proposed treaty failed to eventuate, owing to opposition in the Senate of the

[1] Hansard, vol. xxii, p. 1989.

United States. But the case points to the main difficulty which besets the path of unlimited arbitration. If a State commits itself to arbitration, it is in honour bound to accept the verdict. It is true that there is as yet no international power to execute the verdict against a State which refuses to accept it. But neither the past experience of arbitration, nor an estimate of the considerations which guide States, makes refusal to abide by the judgement of the court a probable contingency. When a State has gone so far as to agree to arbitrate, and has accepted the constitution of the court, it will stand by the verdict. It is in other directions—to be considered presently—that the sanction of force is of much more vital importance.

But the stage of development in which the great Powers will agree to submit ' vital interests and national honour ' to a court of arbitration will only be slowly reached. Other steps must precede it, and the first thing to secure is that there is the right of fair and full inquiry before hostilities are precipitated. It is a much more limited but a much more reasonable claim that, if diplomacy fails, there shall be investigation and mediation in all disputes before war is declared. To submit a case to inquiry and mediation is one thing, to agree to accept arbitration is a very different proposal. There is here an instructive analogy with industrial disputes. Experience has shown that in many important issues investigation and conciliation are better methods than arbitration for the purpose of securing industrial peace. Arbitration, which implies a final judgement, has its proper field in certain matters of industrial or political dispute, as for example, in the interpretation of agreements and like questions of a juridical character. But there are other matters, and these of the most vital interest, on which the state of public

opinion between the disputants—whether industrial or political—is such as to make inquiry and conciliation a more acceptable way of securing mutual understanding and a settlement. A recent development has given a striking proof of the recognition of this fact.

Since the outbreak of the war, a Treaty has been signed and ratified between the United Kingdom and the United States which marks a very important advance towards the peaceable settlement of disputes between these countries. This Treaty, signed at Washington, September 15, 1914, and ratified on November 10, 1914, provides that :

> all disputes between the High Contracting Parties of every nature whatsoever, other than disputes, the settlement of which is provided for and in fact achieved under existing agreements between the High Contracting Parties, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to an International Commission . . . and the Contracting Parties agree not to declare war or begin hostilities during such investigation and before the Report is submitted.[1]

The Treaty further provides for the constitution of the International Commission, and for its appointment within six months after the ratification of the Treaty. It also provides that on any matter of dispute the Report of the International Commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the High Contracting Parties shall limit or extend the time by mutual agreement. The Report of the Commission is not, like the award of a court of arbitration, binding on the parties.

The High Contracting Parties reserve the right to act independently on the subject-matter of the dispute,

[1] Cd. 7714, Article I.

after the Report of the Commission shall have been submitted.[1]

Thus this Treaty, which applies also to disputes affecting the British Dominions, does not provide for arbitration, but by securing investigation and delay it strengthens the chances of peace. But in the present state of international relations it is more important to get a treaty by which two nations will agree to submit all disputes, when diplomacy fails, to a commission of inquiry which has no binding power, than to secure a treaty of arbitration which is limited to matters other than 'vital interests'. It is therefore a highly significant step which the United States has made in inaugurating the establishment of such treaties, and it is greatly to be hoped that the precedents which have now been established will be widely followed.[2]

But even if this is done there still remains a serious question outstanding. Is a sovereign State to have the right of claiming, when it is threatened by another State, that the dispute shall be referred to an international court of inquiry? Is it a fundamental right of States as of individuals that they shall not be condemned and punished without the case being heard? The war has raised and must answer this question. It may be that no single State or group of States is prepared to shoulder an obligation to support this claim on the part of any other State. But if no State is willing to undertake separately or jointly a general obligation, there is a more limited obligation which certain States may be willing to recognize,

[1] Cd. 7714, Article 3.

[2] In the same month, November 1914, a Treaty of Arbitration with the customary reservations, 'vital interests', &c., was signed between such old allies as England and Portugal!

and which would mark an advance in the security of international relations. In his speech on March 13, 1911, Sir Edward Grey said, in speaking of the possibility of an unreserved treaty of arbitration between the United States and England :

> It is true that the two nations who did that (i.e. enter upon an unreserved agreement) might still be exposed to attack from a third nation who had not entered into such an agreement. I think it would probably lead to their following it up by an agreement that they would join with each other in any case in which one only had a quarrel with a third Power by which arbitration was refused.

That is a noteworthy statement, and was made with regard to the right of arbitration, and not to the much lesser right of investigation. May it not therefore be the next practical step that when a nation enters upon a treaty of peace with another State it will not simply provide that disputes between these two States shall be referred for investigation and report before the declaration of hostilities, but that the protection of each shall be guaranteed against any third Power or group of Powers which refuses to accept an international inquiry ? It has been pointed out how that arbitration has advanced by means of individual treaties, and it may well be that by means of such individual treaties of peace weaker nations will be guaranteed against sudden or unfair aggression from other States. No doubt such an arrangement involves risks, but in national as in other affairs it is by undertaking risks that anything great is done. The times are not yet ripe for an international convention binding the family of States to abolish war, and therefore when risks are taken it behoves a State to be prepared for the defence of the rights which it recognizes. But it should be

clearly understood what is the nature of the right which is to be guaranteed. It is not the right of arbitration ; that is a fuller demand which will in time bring great benefit and relief to civilization ; it is the right simply that, before the trial of war, inquiry shall be made by an international commission, so that nations may hear the case and determine their action in accordance with what they feel to be their duty to themselves and to others. The growth of international control depends ultimately on the strength and morality of international public opinion.

II

International control has, in the second place, to deal with the observance of rules for the conduct of war. During the past sixty years, since the Crimean War, this subject has from time to time engaged the attention of nations, and has led to important agreements—agreements which, it should be said, have secured a very large amount of observance. For while in the present war there have been serious violations of international agreements, it should also be remembered to what extent the conventions of war have been honourably respected by all parties. The Declaration of Paris in 1856, the Geneva Conventions of 1864 and 1868, the Declaration of St. Petersburg in 1868, the Conference of Brussels in 1874, the Hague Conference of 1899, the Geneva Convention of 1906, the second Hague Conference of 1907, and the Declaration of London of 1909, mark important stages in the progress of discussion and agreement on the principles which should regulate the conduct of warfare, and the rights and duties of belligerents, non-combatants, and of neutrals.

But there are three considerations which must be kept in mind. First, the conditional character of many of the regulations. While there has grown up a substantial body of rules of conduct regulating very important matters, such as the respect of the Red Cross, the use and observance of the White Flag, the treatment of prisoners who have surrendered, or of wounded captives, the treatment of non-combatants and their property, the bombardment of unfortified places, the sinking of the crews of unarmed enemy ships, and many other matters, yet much which regulates the usage of war is left in a form which is conditional and even indefinite. The latitude of interpretation is wide, and the qualifications made upon the general rules leave room for evasion. But it is not only that in the particular Conventions themselves there are loopholes which largely destroy the value of the rules. The principle laid down in the Convention of St. Petersburg in 1868, that 'the sole end in the conduct of war is the weakening of the military forces of the enemy' has itself been denied. The German Manual on 'The Usage of War on Land' explicitly states the wide discretion which the greatest single military Power reserves to itself:

> A war conducted with energy cannot be directed merely against the combatants of the Enemy State and the positions they occupy, but it will and must in like manner seek to destroy the total intellectual and material resources of the latter. Humanitarian claims, such as the protection of men and their goods, can only be taken into consideration in so far as the nature and object of the war permit.[1]

Second, the experience of the present war has shown

[1] p. 52, *The German War Book*, translated with a critical introduction by Professor J. H. Morgan (John Murray, 1915).

that even in the twentieth century gross violations of the international code of conduct—some actual, others threatened—have to be reckoned with.

Third, there is the fact that there is no international executive to enforce observation of the international rules of war and to inflict punishment where these rules are disregarded. The absence of an effective sanction not only permits nations to disregard in the course of warfare the honourable agreements made in time of peace, but it also has the effect of preventing adequate regulations being made. For it is true at least to some extent that where regulations cannot be enforced they are not made. It is clear from the present state of many Conventions, such as those with regard to the use of mines at sea and of bombs from aircraft, that much more stringent international regulations are required. It is also clear that, with the new developments especially in naval warfare, the field of international regulations has to be reconsidered and extended. But the main problem is to make international control of such regulations effective.

One difficulty which has to be overcome—as a first step towards effective control—is to secure reliable evidence. A nation which has contravened the rules of war will hardly scruple to deny the contravention, and to seek to overthrow the evidence brought against it. Moreover, commissions of inquiry which may be established as in the present way by belligerents will always be liable to the suspicion of being partial, however careful and impartial their evidence and judgement may be. There is only one way of satisfactorily dealing with this situation, namely, that in all cases of war breaking out between two or more nations, accredited international representatives shall be attached to each side of the

combatants, with full powers of inquiry and investigation, and with the duty of reporting to the international authority on contraventions of international rules. A system of neutral international observers would in itself be a deterrent influence on the commission of crime. It is a fact none the less well known, though it is a melancholy confession, that men are less likely to commit a crime when they are under observation than when they are themselves the sole witnesses and judges of their action. It also seems to be a fact that men in association, especially under the strain of war, will often commit organized excesses which individually they would shrink from doing. But just as in a contest there are the rules of the game and the umpire standing present to penalize any foul play, so, while the same executive control cannot immediately be affected by international observers, none the less their presence would not only tend to check the disregard of international conventions, but it should also bring with it international intervention if the warnings of the observers are disregarded. This, however, raises a fundamental question which affects both the right of appeal before hostilities and the conduct of war when it has come, namely, the question of the sanction which is necessary for the safeguarding of international control.

III

The weakness with regard to international law and the conventions regulating the usage of war is the absence of an effective sanction. It would be untrue to say that international law and international conventions lack the support of any sanction. There is, in the first place, the moral support which steadily becomes a greater factor

in the world. There is, secondly, the economic sanction which is already not without importance, and which may become much more effective. By the economic sanction is meant the use of unfriendly economic measures by neutral States against a belligerent State which disregards international law and custom. Neutral States, by cutting off or even restricting supplies to a belligerent country may seriously weaken its strength. But neither moral nor economic considerations furnish a sanction to international law and custom which can be regarded as adequate. So far as international control is concerned, the facts which stand out challenging thought are, first, the refusal of a belligerent Power to recognize the right of a sovereign State to claim investigation by an international commission into the charges brought against it ; and, second, the long sequel of glaring violations of international agreements and the threats of action which at least infringe the principles on which rules of conduct for mitigating the sufferings of war are based. It is, therefore, now more than ever apparent that international law and international custom require, if due respect is to be shown to them by belligerents, to have the support of armed force. Until nations or groups of nations are prepared to treat the denial of an international right or the violation of international agreements as a *casus belli*, there is no adequate safeguard against their violation by a strong military power in East or West.

There is here a simple but fundamental question. Force is in itself neither moral nor immoral : it is the use of force which makes it moral or immoral, right or wrong. Those who hold to the doctrine that force should not be used in controlling the action of nations, should hold logically that the use of force is wrong in the relations

between individuals. Yet, how many people really believe that the individual should never use force? When an individual sees another person commit an act of murder or theft and takes no step physically to prevent such action or secure its punishment, that individual commits a wrong. There are sins of omission as there are sins of commission. So it is also in the sphere of national and international relations. Nations are capable of committing crimes as well as individuals, and in accordance with moral ideas it is the duty of nations, when they see one nation committing a crime, to prevent it, if necessary by force, from so doing. How many people deny to-day that the use of force in suppressing the slave trade was a moral duty upon the nations? The truth is that, so far from the use of force on the part of a nation in preventing an international wrong being something immoral, the neglect to use force in such circumstances is immoral, and a nation which refuses to intervene is a delinquent.

There is a second fundamental question. Nations have rights and obligations as well as individuals, and in civilized society the right of any nation to have its case heard before judgement is passed upon it is fundamental. It is so with the individual, he cannot be condemned to punishment without his case being heard. It should be so also with nations, that no nation should be condemned and punished by another nation without its case being heard. As, then, there is this fundamental right of a nation to have its case heard, so there is the duty imposed on every State to submit, when diplomacy has failed, its claim to an international court of inquiry and mediation, and a nation which refuses to submit a dispute to inquiry, if not to arbitration, should have judgement declared against it as plainly as an individual who refuses

to appear in court to plead his cause has judgement delivered against him by default. No less also there is the right of nations to receive the protection which the conventions of war enjoin, as there is the obligation of nations to observe them. To deny the validity of such rights is to strike at the root of all international growth, and there is no more sacred duty of society than to protect and maintain the inviolability of these rights. To-day, then, the sanction of force itself is required : first, to secure the right to any State, great or small, of having its case heard before force is used against it by any other State ; and second, to secure the observance in war of those rules of international conduct which nations have agreed upon.

In making progress towards such security of international control, the initiative will lie with individual States. Conferences, such as those of the Hague, have a highly valuable purpose. But if effective international control must wait until nations are unanimous in supporting it, developments will be indefinitely delayed. The history of arbitration shows how greatly progress has depended upon the initiative and courage of individual nations. The future developments of international con trol will no less depend upon the resolve of certain States to declare themselves ready to support this policy and, if need be, to defend it by force of arms. We have seen that in recent months the British Empire and the United States have agreed to a Commission of Peace. The first question for members of these States to ask is, how far their States, respectively, are prepared to undertake responsibilities on behalf of international control. Are they prepared to assert the right of any nation to have its case heard before force is levied on it ? Are they prepared

to protest against the violation of international conventions and to uphold the observance of humane principles in the conduct of war? Are they prepared to try how far they can obtain the co-operation of other Powers, great and small, in securing these two things—the right of a nation to have its case heard, and the right of nations to have international conventions for the conduct of war honourably observed? When once a group of nations has formed itself into such an international alliance, the greatest safeguard has been secured for the world's peace and for its progress.

Judicial institutions come before parliamentary, and the world's tribunal may ultimately pave the way to the world's parliament. Meanwhile a court of international authority, if backed by international power, will give to internationalism a reality which it has hitherto never had. It is well to be guarded in our hopes for internationalism, and to recognize very clearly the significance and value of nationality. But true nationality is not incompatible with internationalism. They are rather complementary. And as the nineteenth century saw the renascence of nationalism, so the twentieth century must see the establishment of an international control which will itself be the safeguard to all nationalities of peaceful self-development.

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